

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a Washington corporation,

Plaintiff,

v.

GLOBAL ELECTRONIC RECYCLING, LLC, an Arizona corporation; DANNY L. KIRKPATRICK, an individual; GARY L. KIRKPATRICK, an individual; and JOHN DOES 1 - 10,

Defendants.

NO. 2:15-cv-1461-RSM

DEFENDANTS' ANSWER TO COMPLAINT FOR DAMAGES

Global Electnoica Recycling, LLC, ("Global"), Danny Kirkpatrick and Gary Kirkpatrick (the "Kirkpatricks" or "Individual Defendants") state and allege by way of Answer to Microsoft Corporation's ("Microsoft") Complaint for Damages as follows:

I. INTRODUCTION

1. Answering ¶1, Global and the Individual Defendants admit this action contains the enumerated claims, but otherwise denies.

2. Answering ¶2, Global and the Individual Defendants admit Microsoft contracted with Global for recycling services, and that the contracts speak for themselves. Global and the Individual Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding the "product key cards" or from whom such product was actually

1 delivered and therefore denies. Global and the Individual Defendants deny the remaining  
2 allegations.

3 **II. PARTIES**

4 3. Answering ¶3, Global and the Individual Defendants admit.

5 4. Answering ¶4, Global and the Individual Defendants admit the allegations in the  
6 first and second sentences. As to the third sentence, Global and the Individual Defendants  
7 admit they contracted with Microsoft but assert the documents speak for themselves and  
8 otherwise denies.

9 5. Answering ¶5, Global and the Individual Defendants admit the allegations in the  
10 first sentence. The remaining sentences contain legal conclusions and argument that do not  
11 require a response, to the extent a response is required Global and the Individual Defendants  
12 deny.

13 **III. JURISDICITON & VENUE**

14 6. Answering ¶6, Global and the Individual Defendants admit.

15 7. Answering ¶7, Global and the Individual Defendants admit the allegations in the  
16 first sentence, but otherwise deny the remaining allegations in the paragraph.

17 8. Answering ¶8, Global and the Individual Defendants admit the allegations of the  
18 first sentence, but otherwise deny the remaining allegations in the paragraph.

19 9. Answering ¶9, Global admits as to itself, and the Individual Defendants deny.

20 **IV. FACTS COMMON TO ALL CLAIMS**

21 10. Answering ¶10, Global and the Individual Defendants do not believe this  
22 paragraph requires a response, and lack sufficient knowledge or information to form a belief as  
23 to the truth of the sweeping generalizations of this paragraph, and therefore deny.

24 11. Answering ¶11, Global and the Individual Defendants lack sufficient knowledge  
25 or information about Microsoft's "wide range of initiatives" and therefore deny the first  
26 sentence. As to the second sentence, Global and the Individual Defendants admit a document  
27

1 titled Microsoft's Supply Chain Security Compliance Policies and Procedures exists and assert  
2 the document speaks for itself. Global and the Individual Defendants otherwise deny the  
3 remaining allegations.

4 12. Answering ¶12, Global and the Individual Defendants admit Microsoft develops  
5 and sells software including Microsoft Office 2010. Global and the Individual Defendants  
6 further admit that Microsoft registered a copyright in Office Professional Plus 2010 and states  
7 the document attached as Exhibit A speaks for itself. The remainder of the paragraph contains  
8 legal conclusions to which no response is required, and/or allegations which Global and the  
9 Individual Defendants lack knowledge or information sufficient to form a belief as to the truth  
10 of the allegations and therefore deny.

11 13. Answering ¶13, Global admits it entered into the Materials Handling and  
12 Disposition Agreement and Statement of Work and states that the documents speak for  
13 themselves. The Individual Defendants deny they entered into either contract with Microsoft  
14 in any individual capacity. Global and the Individual Defendants deny the characterizations  
15 and legal conclusions contained in this paragraph.

16 14. Answering ¶14, Global and the Individual Defendants state the documents  
17 speak for themselves.

18 15. Answering ¶15, Global and the Individual Defendants state the documents  
19 speak for themselves, and otherwise deny the characterizations and legal conclusions contained  
20 in this paragraph.

21 16. Answering ¶16, Global and the Individual Defendants state the documents  
22 speak for themselves, and otherwise deny the characterizations and legal conclusions contained  
23 in this paragraph.

24 17. Answering ¶17, Global and the Individual Defendants state the documents  
25 speak for themselves, and otherwise deny the characterizations and legal conclusions contained  
26 in this paragraph.

1 18. Answering ¶18, Global and the Individual Defendants state the documents  
2 speak for themselves, and otherwise deny the characterizations and legal conclusions contained  
3 in this paragraph.

4 19. Answering ¶19, Global and the Individual Defendants state the documents  
5 speak for themselves, and otherwise deny the characterizations and legal conclusions contained  
6 in this paragraph.

7 20. Answering ¶20, Global and the Individual Defendants state the documents  
8 speak for themselves, and that affiliates and third parties delivered materials to Global for the  
9 services described in the documents.

10 21. Answering ¶21, Global and the Individual Defendants admit that in  
11 approximately September 2014 they affirmatively notified the Phoenix Police Department to  
12 alert them of their suspicions about one of their employees engaging in illegal activity, and  
13 then assisted the Police when they responded. As to the remaining allegations of this  
14 paragraph Global and the Individual Defendants lack knowledge or information about the  
15 Phoenix Police Departments contacts with Microsoft sufficient to form a belief as to the truth  
16 of the allegations and therefore deny.

17 22. Answering ¶22, Global and the Individual Defendants lack knowledge sufficient  
18 to form a belief as to the truth of the allegations and therefore deny.

19 23. Answering ¶23, Global and the Individual Defendants admit that one former  
20 employee was involved with theft from Global, was terminated and turned over to the Phoenix  
21 Police by Global. Global and the Individual Defendants lack knowledge sufficient to form a  
22 belief as to the truth of the allegations and therefore deny.

23 24. Answering ¶24, Global and the Individual Defendants deny.  
24

25 **V. CAUSES OF ACTION**

26 **First Claim: Breach of Contract**  
27 **(Against Defendant GER)**

1           25.     Answering ¶25, Global states the documents speak for themselves and  
2 otherwise denies. No response is required by the Individual Defendants as no allegations are  
3 addressed to them.

4           26.     Answering ¶26, Global denies. No response is required by the Individual  
5 Defendants.

6           27.     Answering ¶¶27 - 28, Global denies. No response is required by the Individual  
7 Defendants as no allegations are addressed to them.

8                           Second Claim: Breach of Implied Covenant of Good Faith  
9   (Against Defendant GER)

10           28.     Answering ¶¶29 - 31, Global states the documents speak for themselves. These  
11 paragraphs contain legal conclusions to which no response is required, to the extent a response  
12 is required, Global denies. No response is required by the Individual Defendants as no  
13 allegations are addressed to them.

14           29.     Answering ¶32, Global denies. No response is required by the Individual  
15 Defendants as no allegations are addressed to them. .

16                           Third Claim: Negligence in Performance of Services  
17   (Against Defendants GER, Danny Kirkpatrick and Gary Kirkpatrick)

18           30.     Answering ¶33, the paragraph contains legal conclusions to which no response  
19 is required, to the extent a response is required, Global and the Individual Defendants deny.

20           31.     Answering ¶¶34 - 35, Global and the Individual Defendants deny.

21           32.     Answering ¶35, Global and the Individual Defendants deny.

22                           Fourth Claim: Negligent Supervision  
23   (Against Defendants GER, Danny Kirkpatrick and Gary Kirkpatrick)

24           33.     Answering ¶36, this paragraph contains legal conclusions to which no response  
25 is required, to the extent a response is required, Global and the Individual Defendants deny.

26           34.     Answering ¶37, Global and the Individual Defendants admit one employee  
27 acted outside the scope of his employment by stealing. Global and the Individual Defendants  
deny the remainder of the allegations in this paragraph.

          35.     Answering ¶38 - 41, Global and the Individual Defendants deny.

**Fifth Claim: Contributory Copyright Infringement**  
**(Against All Defendants)**

36. Answering ¶¶42 - 43, Global and the Individual Defendants lack sufficient knowledge and information to form a belief about the truth of the allegations, and therefore deny.

37. Answering ¶44, Global and the Individual Defendants deny.

38. Answering ¶¶45 - 46, these paragraph contains legal conclusions to which no response is required, to the extent a response is required, Global and the Individual Defendants deny.

**VI. DEFENSES**

39. This Court lacks personal jurisdiction over the Individual Defendants.

40. Microsoft has failed to state a claim for which relief may be granted.

41. Microsoft has failed to mitigate damages and/or contributed its own negligence to any alleged damages suffered.

42. Microsoft's claims are barred in whole or in part by doctrines of waiver, laches, estoppel and/or unclean hands.

43. Microsoft's claims are barred in whole or in part by its own breach of contract.

44. Microsoft's damages, if any, may have been caused by an intervening or superseding act or event for which Global and the Individual Defendants are not responsible.

45. Microsoft's claims are barred in whole or in part because Global and the Individual Defendants did not cause or contribute to any infringement.

46. Microsoft's damages, if any, may have been proximately caused in whole or in part by the negligent or intentional acts or omissions of third parties over whom Global and the Individual Defendants have no control or right of control, and for whom Global and the Individual Defendants have no legal responsibility and so Global and the Individual Defendants have no liability to Microsoft, or Global and the Individual Defendants' liability should be reduced by an amount to be demonstrated at trial.

1 47. Microsoft's damages are barred as a result of Microsoft's own negligent and/or  
2 fraudulent misrepresentations/omissions which, but for those improper representations and/or  
3 omissions, Global would not have entered into of the underlying contract which is the subject  
4 of the complaint in this matter.

5 48. Microsoft's claims are subject to set off and/or should be off set against any  
6 funds that Microsoft may have received related to any alleged infringement, breaches of  
7 contract, or negligence asserted in its complaint.

8 Global and the Individual Defendants reserve the right to amend their Answer to assert  
9 additional affirmative defenses and counterclaims as discovery proceeds.

10 **VII. PRAYER FOR RELIEF**

11 Global and the Individual Defendants pray for the following relief as to Microsoft's  
12 claims:

13 A. Dismissal of all claims against all defendants, with prejudice and with costs  
14 awarded to defendants;

15 B. An award of attorney fees as allowed for by law; and

16 C. Any other relief as the Court may deem just and equitable.

17 DATED this 2<sup>nd</sup> day of November, 2015.

18  
19 s/ Daniel A. Brown  
s/Daniel J. Velloth  
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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all CM/ECF participants.

DATED this 2<sup>nd</sup> day of November, 2015.

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s/Daniel J. Velloth  
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